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Situation of human rights in the Sudan

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Sudan, Gerhart Baum, pursuant to resolution 2002/16 of 19 April 2002 of the Commission on Human Rights and Economic and Social Council decision 2002/250 of 25 July 2002.

* A/57/150.

** The present report is being submitted on 20 August 2002 so as to include as much updated information as possible.

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Interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Sudan

Summary

The Special Rapporteur, while welcoming the Machakos Protocol, highlights the need for human rights to be put at the centre of the talks.

In view of the links between peace and democracy and human rights, peace talks should be more comprehensive and include all stakeholders in what is not simply a North-South conflict. Confidence-building and reconciliation need democracy.

Overall, the situation of human rights has not improved. Civil society structures need to be strengthened.

Implementation of the peace agreement is key: international monitoring is necessary.

The United Nations should play a stronger role, particularly in the post-conflict scenario, both in monitoring implementation of peace and strengthening the civil society.

In this connection, the Special Rapporteur welcomes the technical cooperation programme undertaken by the Office of the United Nations High Commissioner for Human Rights and will monitor its impact on the ground.

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I. Introduction

1. Following his October 2001 mission to the Sudan and Kenya and the presentation of his report to the General Assembly (see A/56/336), the Special Rapporteur travelled to the region in February-March 2002 to collect updated information for the presentation of his report to the Commission on Human Rights at its fifty-eighth session.

2. From 26 through 28 February 2002, the Special Rapporteur visited Cairo, where he met with some Egyptian authorities, including representatives from the Ministry for Foreign Affairs and Presidential Adviser, Osama el-Baz. He also met with the Secretary-General of the League of Arab States, Amr Musa, as well as with members of Sudanese opposition parties (Sudanese Democratic Unionist Party (DUP); Union of Sudanese African Parties (USAP), non-governmental organizations (NGOs), Sudanese Victims of Torture Group (SVTG)) and representatives of the Massaliet minority, who briefed him about the situation in Darfur.

3. From 1 through 5 March 2002, the Special Rapporteur visited Khartoum, where he met with the First Vice-President, the Presidential Adviser on peace, the Ministers of Justice, Defence, Energy and Mining, Information and Communication, Guidance and Endowment, the State Minister for Foreign Affairs and the Head of the Human Rights Committee in the National Assembly, as well as the Rapporteur of the Advisory Council for Human Rights. He also met with different segments of the civil society, including representatives of the political opposition, domestic NGOs, the press and the churches, and held consultations with the United Nations Resident Coordinator and heads of United Nations agencies, representatives of the donors, diplomatic and consular missions and international NGOs.

4. In Nairobi, the Special Rapporteur met with representatives of the Sudan People's Democratic Front/Sudan People's Defence Forces (SPDF), Operation Lifeline Sudan (OLS) and non-OLS organizations, representatives of some key donor countries as well as the Kenyan Presidential Envoy for the Intergovernmental Authority for Development (IGAD), Lazaro Sumbeiywo.

5. During his visit, the Special Rapporteur noted with appreciation that a number of steps had been taken which may lead to an improvement of the human rights situation in the Sudan. He has continued to follow the situation on the ground to see how it is being developed in the long run and took note of the commitments that the Government made to the European Union in the framework of their ongoing dialogue.

6. New elements focused on the building up and/or strengthening of institutions, i.e. the new Committee for the Eradication of Abduction of Women and Children (CEAWC) structure, discussions relating to the creation of a national human rights institution, the training activities organized by Office of the United Nations High Commissioner for Human Rights within its technical cooperation programme and, in rebel-held southern Sudan, the initial steps taken towards the strengthening of the civil society.

7. The Special Rapporteur took note of the United States-led initiative and the report on the outlook for peace in the Sudan by the Special Envoy for Peace, Senator Danforth, as well as the different reactions it generated within the Sudanese and the broader international arena.

8. The present report includes the findings of the mission as well as an updating on the overall situation based on information collected since then.

9. The Special Rapporteur will conduct his fourth visit during the fall of 2002, tentatively. His findings will be reflected in his oral presentation to the General Assembly and will be the basis of his next report to the Commission on Human Rights.

II. Respect for human rights and humanitarian law in the conflict

A. The peace talks

10. In view of the link between a sustainable peace and human rights, the Special Rapporteur followed with interest the latest developments within the IGAD-led peace talks. He welcomes the positive outcome of the first round of talks which started in Machakos, Kenya, on 17 June 2002, on the practical implementation of the formula "two systems — one State" and the signing, on 20 July 2002, of the Machakos Protocol on the two issues of self-determination and religion and State, so far the stumbling blocks in the peace negotiations. He

acknowledges the more vigorous approach of the IGAD mediator and the decisive role of Norway, the United States and the United Kingdom. Particular thanks go to the United States administration for backing all initiatives by Senator Danforth and his team.

11. The Special Rapporteur looks forward to the outcome of the following round of talks, which started on 12 August 2002. While appreciating the recent positive developments, he noted that some observers appear sceptical regarding the actual chances for peace, in view of the escalation of military activities, the hardening of the parties' positions, lack of progress on tackling the root-causes of the conflict and the fact that the focus has remained on humanitarian issues only, without evolving into a more comprehensive approach, which is why potential external leverage is slowly eroding.

12. Moreover, the Special Rapporteur noted with concern that involvement of the civil society remains limited for the time being and expresses the hope that more comprehensive discussions will be held. In this connection, the actual implementation of the peace agreement and its monitoring remain key.

13. The Special Rapporteur noted that the New Sudan Council of Churches issued a statement in which it declared: "We encourage the peace process to be inclusive and employ conflict resolution strategies so that people are empowered to join in the peace and rebuild their lives and communities".[1]

14. The Special Rapporteur noted with interest the strategy on widening participation in the IGAD process, as reflected in the International Crisis Group report entitled "Dialogue or Destruction? Organizing for Peace as the War in Sudan Escalates",[2] which foresees a number of actors, notably the negotiating circle (the Government of the Sudan and the Sudan People's Liberation Movement and Liberation Army (SPLM/A), the IGAD Special Envoy, Eritrea, Ethiopia and Uganda); an observer circle (Norway, the United States and the United Kingdom); an external leverage circle (Egypt and others; possibly the United Nations and the African Union); a Sudanese consultation circle (National Democratic Alliance (NDA), Umma Party and civil society); and the "Track II consultation circle" (the Max Planck Institute, the World Bank Nile Basin Initiative and the African Renaissance Institute).

B. Intensification of military activities

15. Since his mission, the Special Rapporteur has continued to receive information pointing to the perpetration by all parties to the conflict of numerous serious violations of human rights and international humanitarian law, of which innocent civilians continue to be the principal target. As the conflict entered its nineteenth year, indiscriminate bombing of civilians has continued unabated, including at night, thus severely hampering access to humanitarian aid.

16. While the Government pursued its strategy in western Upper Nile, Bahr al-Ghazal and Southern Blue Nile, SPLM/A continued to focus on the oil areas, where oil infrastructure and assets continued to be considered legitimate military targets.

Aerial bombing

17. Sources agree that, as a result of the intensification of military activities, the number of casualties has risen. On 18 April 2002, the International Committee of the Red Cross (ICRC) News 16 reported that the ICRC Lopiding hospital in Lokichokio, Kenya, received an unprecedented influx of patients, bringing the total number to more than 680 for the first time in its history, following an upsurge in fighting in southern Sudan — especially in western Upper Nile in early April.

18. On 22 May 2002, at 2 a.m., an Antonov reportedly dropped 16 bombs in an area between Mayam and Manken. Fifteen people were reportedly killed, 35 seriously wounded, mostly 10- and 11-year-old boys.

19. On the same day, at 8.30 a.m., an Antonov bomber reportedly dropped 16 bombs on Rier, Mankien county, south of Bentiu, near the oil road of concession block 5A in western Upper Nile, killing 11 people and wounding 95, of whom 35 were reported to be serious cases whose legs and arms had been blown off.[3] It should be noted that Rier is a relief centre for displaced people. Neither OLS nor ICRC had been granted access to the area at that time.

20. Lil, a few miles from Touc in western Upper Nile, was also reported bombed on the same day. A lot of casualties among civilians were reported as well as 18 deaths.

21. On 11 June 2002, Madier, in western Upper Nile, was reportedly bombed. Twenty-four persons were reported as having been killed or to have died of wounds. The village of Rienydar, in western Upper Nile, was also reported to have been bombed on 10 June 2002.

22. On 20 June 2002, OLS South was informed that the Government had denied any intervention by OLS South into western Upper Nile.

23. On 23 June 2002, six bombs were reportedly dropped in Malual Kon, Bahr al-Ghazal, at about 20 metres from the local International Rescue Committee compound. Four civilians were reported as having been killed, including a blind old man and two teenage girls, and another five to eight injured. The village, which is located far from the frontlines, hosts a community of 4,000 and is a well-established centre for humanitarian operations.

24. On the same day, an Antonov attack was reported in Bac, near Warawar, Bahr al-Ghazal, which caused the deaths of three women.

25. On 25 June 2002, four bombs reportedly struck the residence of Bishop Johnson Akio Mutek, the auxiliary bishop of Torit diocese, in Ikotos, eastern Equatoria, injuring an unconfirmed number of people. The bishop's home and the adjacent St. Joseph youth centre were reportedly destroyed in the air raid.

26. On 28 June 2002, Atar, Upper Nile, was reported shelled. Several bombs were reportedly dropped. Three children were reported having been killed and three other people having been seriously injured.

Internally displaced persons

27. The Special Rapporteur was informed that between 150,000 and 300,000 people have reportedly been displaced in western Upper Nile alone since the beginning of 2002. While it is difficult to provide exact references to damage incurred, information points to the destruction of some 40 villages destroyed in western and northern Upper Nile by the Government from January to April 2002 and one village, Tuhubak, 50 kilometres east of Torit, burned down by SPLM/A in eastern Equatoria on 13 March 2002, which led to the deaths of 24 civilians.

Access

28. Denial of access has continued to be used by both the Government and SPLM/A, thus hampering the delivery of humanitarian aid to the most needy areas. A number of locations in Upper Nile, Bahr al-Ghazal and Equatoria have continued to be banned by the Government, some for years. Wau, Bahr al-Ghazal, has been banned by SPLM/A since April 2002.

29. In April 2002, the United Nations condemned access denial to 43 locations, expressed concern about the use of flight bans and called upon both parties to the conflict for full access to all locations. In May 2002, following a flight ban for Unity state, encompassing western Upper Nile, nine major aid agencies working in the Sudan reiterated the same concerns.

30. On 29 May 2002, the Government agreed to resume aid flows into western Upper Nile provided that relief flights pass through El Obeid, northern Kordofan. The Special Rapporteur expresses his concern about any attempt to amend the terms of the current tripartite agreement and warns against the setting of precedents to that end.

31. The issue of access was personally brought up by the Secretary-General on the occasion of his visit to Khartoum, on 10 and 11 July 2002.

Landmines

32. The Special Rapporteur continued to receive information confirming that both parties resorted to the use of landmines. He noted that the Sudan has signed, but not yet ratified, the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction.

33. Information received also points to the continuation of forced conscription practices by both parties. Allegedly, the Government has forcibly conscripted young civilians as well.

C. The oil issue

34. The Special Rapporteur repeatedly discussed the issue of oil exploitation with representatives of the Government, Swedish Lundin Oil[4] and Canadian Talisman. Further consultations are envisaged with the other oil companies. Details of his visit to the oil fields

in October 2001 were reflected in his report to the Commission on Human Rights at its fifty-eighth session (E/CN.4/2002/46).

35. Following interviews with internally displaced persons in northern and southern Sudan, the Special Rapporteur has continued to receive alarming information pointing to the continuation of grave human rights abuses linked to oil exploitation, aimed at depopulating oil-rich areas to ensure their control.

36. The ceasefire in the Nuba Mountains has reportedly allowed for redeployment of troops in oil rich Unity state, thus leading to an intensification of war-related activities.

37. Civilians have continued to be specifically targeted, from October 2001 to early 2002 (in the south-eastern part of Ruweng county, in oil-concession blocks 1 and 2 and in the northern part of block 5A in western Upper Nile). Proxy militias are allegedly instructed systematically to kill and displace civilians.[5]

38. Sources point to an estimated 80,000 people from Ruweng county and some additional 50,000 from western Upper Nile being displaced and at serious risk of food shortages.

39. The Special Rapporteur was shocked to read witnesses' accounts of scorched earth tactics used by air and ground forces to clear oil-rich areas, chase people out of their villages and ensure that they would not return, including by planting anti-personnel landmines around watering points and along pathways to areas where wild food is available and in emptied villages.

40. In addition, the Special Rapporteur was informed that oil revenues have determined an increase in military expenditures,[6] which have reportedly more than doubled, thus allowing for the purchase of new, more sophisticated and better performing war equipment.

41. The Special Rapporteur reiterates his concern about the ongoing situation in Unity state, particularly about the plight of civilians, in view of the recent escalation of war-related activities and brutalities reported.

D. Abductions

42. During his last visit, the Special Rapporteur was informed that, in an attempt to strengthen the Committee for the Eradication of Abduction of Women and Children, the President of the Republic had moved the Committee directly under his supervision, while providing it with full-time chairmanship and appropriate resources.[7]

43. The Special Rapporteur was fully briefed about the new CEAWC methodology of work and its more participatory approach, aimed at enabling the Committee to accomplish its mandate in the one-year time frame set to deliver concrete results.[8]

44. In his speech to the Commission on Human Rights, the Special Rapporteur welcomed Senator Danforth's initiative aimed at investigating, on the ground, means for preventing abductions. Following its mission, the Eminent Persons Group issued a report on 22 May 2002.

45. The Special Rapporteur noted that the Group concluded that the Government of the Sudan and its predecessors have been responsible for arming murahaleen groups, for using them as auxiliary military forces and for allowing members of such forces to enjoy impunity for a wide range of serious crimes committed in the course of attacks. The Group concluded that in a significant number of cases, abduction is the first stage in a pattern of abuse that falls under the definition of slavery in the International Slavery Convention of 1926 and the Supplementary Convention of 1956. The Group was unable, however, to establish the scale of abduction and enslavement. Responsibility for the lack of reliable information on this subject lies with the Government and the SPLA, both of which have obstructed the necessary research by independent investigators.[9]

46. The Special Rapporteur noted in particular the reference to the link between abduction and governance, in terms of absence of democratic institutions and practices both in areas controlled by the Government and in those controlled by the SPLM/A and other armed groups and narrow space allowed for democratic processes and the development of civil society organizations.[10]

47. The Special Rapporteur noted the position of the Government, as formulated in the letter dated 15 April

2002 from the Adviser to the President on Peace Affairs to the Chair of the Eminent Persons Group.

48. On 15 May 2002, the Special Rapporteur received a press release from the Permanent Mission of the Sudan, regarding the involvement of President Omer al-Bashir in CEAWC activities. According to information received, "to show his personal commitment to the eradication of intertribal abduction", the President and high officials attended a CEAWC meeting, in which he "emphasized the importance that the Government bestows on the Committee [and] called for the enhancement of tolerance and coexistence among Sudan's diverse people".[11]

49. Finally, the Special Rapporteur noted that within the framework of the European Union-Sudan dialogue, the Government committed itself to fighting abductions through (a) making a substantial financial contribution to CEAWC and (b) supporting CEAWC with more resources and staff. He regrets that, reportedly, contributions made available so far are not sufficient to enable CEAWC to fulfil its mandate.

50. On the commitment made to the United Nations Children's Fund (UNICEF) to grant flight authorizations whenever the flight is used to return abductees to their families, the Special Rapporteur noted that two flights were granted clearance by the Government. As a result, 33 individuals have been able to return to their families in SPLM/A-controlled areas.

51. No steps have reportedly been taken on the prosecution of any person found guilty of new abductions.

52. No specific policy has reportedly been put in place aimed at discouraging murahalleen from practising abductions.

53. The Special Rapporteur regretted information received relating to an alleged case of abduction in Bahr al-Ghazal on 26 May 2002, whereby elements of the Popular Defence Forces (PDF), believed to have originated from Rumaker, attacked and raided villages in Malual East of Aweil North and Mariam and Gumjuer payams in Aweil West. Twenty-three people were reportedly killed in Mariam and Gumjuer, 5 in Malual East and 12 children and women were reportedly abducted in the course of the attack. Raiders reportedly burnt down 67 homesteads in 7 villages attacked, notably Makuac-chimel, Rol-ngol, Awet-gumjuer, Madhol-gumjuer, Wut-liet, Gok-ajokdit and Mabil.

E. SPLM/A

54. The Special Rapporteur noted that information regarding the situation of human rights in rebel-held areas is scarce. While this does not exclude the occurrence of human rights violations in those areas, it explains why details on individual cases are not reflected in the present report. However, the Special Rapporteur continued to inquire about the situation of human rights in SPLM/A-controlled areas, particularly while on mission.

55. While in Nairobi, he was informed that SPLM/A-held areas continue to be administered by the military[12] in spite of some slow developments in the building up of civil society structures.

56. Elections, which had been repeatedly announced and postponed, have not yet taken place. The Special Rapporteur was informed that they would be further postponed, owing to the January merger between SPLM/A and SPDF.

57. As for the use of child soldiers, the Special Rapporteur received an update on the demobilization programme conducted by UNICEF. Training and awareness-raising remain important to prevent further recruitment from taking place.

58. Moreover, the need for effective monitoring of the process was underscored, in conjunction with the development of a stronger sense of ownership by SPLM/A, now that all excuses for inaction have been removed.

III. Transition to democracy

59. In his report (E/CN.4/2002/46), the Special Rapporteur had highlighted issues of concern, such as the continuation of the state of emergency, which has provided the legal basis for the establishment of Special Courts in Darfur; the role of the security forces; the transition to democracy; the curtailment of freedom of expression; the suppression of political freedoms; the plight of the internally displaced persons; and religious discrimination.

60. On the commitments made by the Government within the European Union-Sudan dialogue, the Special Rapporteur noted the following.

61. On freedom of the press, he regrets that, in spite of the decision to lift censorship in December 2001, harassment and intimidation of journalists continued in different forms. Journalists are sometimes summoned by security agents, who instruct them about what and how to report. Alternatively, they are reportedly provided with pre-made texts which they are requested to publish. Financial burdens, particularly fines, are imposed upon newspapers, which often threaten their existence. The National Press Council did not appear to play any significant role so far.

62. On freedom of religion and the establishment of an Advisory Council for Christians, during his mission, the Special Rapporteur met with the Minister of Guidance and Endowment, who informed him that a dialogue had started with the churches to this end. However, in June 2002, the Sudan Council of Churches declared that it had not been informed of the scope of the mandate of such a body. Overall, freedom of religion does not yet appear to be fully guaranteed.

63. On democratization, cooperation with other parties and inclusion of opposition in the Government at all levels, the Special Rapporteur appreciated that opposition parties are still not allowed to operate in a free environment and face obstacles in the running of political activities. Sources pointed to the fact that even registered political parties are not allowed to work. Opposition members, particularly from the Popular National Congress (PNC) and the Communist Party, continued to be detained on political grounds. PNC leader, Hassan al-Turabi, continued to be detained under house arrest, without any legal basis, according to his lawyers.

64. As for the implementation of a programme of civic education in democracy, no indications were received on the implementation of such a programme on behalf of the Government.

65. Security forces continued to operate above the law; all the cases received are characterized by infringements of civil liberties by security agents, who seem to continue to enjoy a high degree of impunity.

66. Regarding the amendment to limiting the National Security Forces Act to the purpose of fighting against terrorism, the Special Rapporteur noted that the Act continued to be used in connection with arrests and detentions of government opponents.[13] Accordingly, the Act appears to be having a negative impact on the human rights situation.[14]

67. In addition, amendments were introduced on 22 January 2002 by presidential provisional order to the Criminal Procedure Act of 1991, which strengthen the powers of law enforcement agents in matters relating to, inter alia, investigation, arrest, interrogation and detention, without judicial review. NGOs expressed concern about the risk that such an amendment may give police officers a power comparable with the one enjoyed by security officers. The decree was endorsed by the National Assembly in June 2002. The Special Rapporteur remains concerned about its potential implications, which need to be monitored, particularly as impunity is an issue that has not yet been tackled in a satisfactory manner.

68. Regarding ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and accession to the Convention on the Elimination of Discrimination against Women, the Special Rapporteur noted that no progress has been achieved in spite of the reassurances that he had received to this end during his first visit. He noted that the Office of the United Nations High Commissioner for Human Rights is planning a specific seminar on this issue within its technical cooperation programme.

69. On the situation of women, the Special Rapporteur was informed that, at the end of July, 21 women, mostly from the Customs and Excise Forces (CEF) Headquarters in Khartoum, were dismissed. Allegedly, none of them was sent a written official service termination letter. Instead, they were all informed verbally and individually by the CEF Chief in Khartoum. No reason was provided for the dismissal.

70. According to the source, the list of dismissal does not include any male officer. Moreover, it was reported that female officers have continuously been ignored in promotions compared to their male colleagues. The whole matter appears to be currently handled by the Ministry of Interior.

71. Some sources reported unrelated information whereby, during a conference held in the Women's College of Omdurman Islamic University in May 2002, sponsored by the Ministry of Guidance and Endowment, a female gynaecologist spoke in support

of female genital mutilation and recommended the introduction of "Islamic medical doctrine" in the training of medical personnel. A religious leader who also participated at the conference reportedly stated that female circumcision was an Islamic practice referred to in the Sunna.

72. While acknowledging that the Government has not supported such a practice so far and praising efforts including by the civil society aimed at eradicating harmful traditional practices, the Special Rapporteur hopes that discussions such as the one held at the Women's College will not result in a change of attitude on this issue, which would represent a setback in the fight for the eradication of female genital mutilation.

IV. Other reported violations of human rights

Individual cases

73. Since January 2002, the Special Rapporteur addressed 11 urgent appeals to the Government of the Sudan, concerning 157 individuals. All appeals were sent jointly with thematic Special Rapporteurs. One reply has been received from the Government. While individual cases raised and discussed in Khartoum seem to receive immediate attention from the Sudanese authorities, the Special Rapporteur regrets that this does not seem to be the case for communications sent.

The situation in Darfur

74. The Special Rapporteur received information on the situation in Darfur, western Sudan, which points to a number of factors, including the worsening of the socio-economic situation, the ongoing "local" conflict, opposing the Fur and Massaleit tribes and Arabs from Darfur and neighbouring Chad, and drought, which has further exacerbated the fight among tribes over land and pastures. As a result, villages have been destroyed and depopulated, leading to a high rate of displacement. In addition, crime has reportedly increased, as the displaced are desperate to ensure their and their family's survival. Sources report that up to 1 million people currently risk starvation.

75. The Special Rapporteur met with representatives of the Massaleit community in exile in Cairo, who claimed that the depopulation of villages, displacement and changes in land ownership are allegedly part of a government strategy to alter the demography of the region.[15] So far, four villages in the region have reportedly been depopulated following attacks by militia from Arab tribes.

76. During his last visit, in discussions with government authorities, the Special Rapporteur expressed concern about the situation in Darfur. He was informed that the conflict in Darfur results from intertribal disputes deriving from the competition for land between pastoral and crop farmers in the area.

77. According to information received, in spite of the fact that authorities are aware of the situation and although a number of perpetrators have been identified by the leaders of the Fur and Massaleit tribes, no investigations have been made nor have perpetrators been brought to justice.

78. Instead, the Special Rapporteur was informed that these leaders have recently been arbitrarily arrested and detained (see below, para. 81 (b) and (c)), which, according to some sources, tends to reinforce claims of the Government's involvement through the support of the Arab militias.

79. As for the Special Courts, the Special Rapporteur studied Decree No. 21/2001 on the establishment of the Special Court at El-Fashir, issued by the Wali of northern Darfur on 1 May 2001. According to the decree, if the accused withdraws his confession, the court shall take into account that confession as evidence against the accused. The accused has no right to withdraw his confession.[16] In addition, lawyers have no right to appear before the courts to represent suspects, but a suspect's friend can appear instead to provide help before the court.[17]

80. A similar court was also established in Nyala, southern Darfur. This judicial body, reportedly established in accordance with article 6 (2) of the Law of Emergency and Protection of Public Safety of 1997 and with the State of Emergency No. 1 of 1998, by the Governor of southern Darfur, deals with crimes of armed robbery, crimes against the State, as well as crimes relating to drugs and public nuisance. It is said to operate with one civil and two military judges. Lawyers are reportedly forbidden to stand before the Special Court and plaintiffs are given the right to appeal only when sentenced to death or amputation. Under such circumstances, the appeal must be made within seven days of the sentence to the District Chief of Justice, whose decision is final.

81. Since his visit, the Special Rapporteur has continued to receive information relating to individual cases of human rights abuses. In view of the gravity of the situation in western Sudan, in the present report, the Special Rapporteur refers to the following cases:

(a) Fourteen prisoners charged with armed robbery were reportedly sentenced to death by the Nyala Special Court No. 1. According to information received, on 8 May 2002, five of the detainees, namely Mohamed Abakar Haroun, Khaleel Tahir Bashier, Adam Abd Allah Mohamed, Ahmed Jouma Mohamed and Habieb Ali Abd Algadir, were sentenced to death by hanging and crucifixion by the Nyala Special Court. The other detainees, namely, Adam Musa Biraima, Adam Alzain Ismail, Abd Allah Wadai, Mohamed Abd Alrasoul Thabit, Mohamed Abd Almahmoud Mohamed, Abd Allah Mukhtar, Hafiz Suliman Yahya, Hamad Mohamed Adam and Dakhru Abd Allah Jouma, were all reportedly sentenced to death by hanging by the same court. Reportedly, the aforementioned prisoners did not benefit from legal representation during their respective trials. Their lawyers have reportedly launched an appeal with the District Chief of Justice, whose outcome was still being awaited at the time of submission of the present report;

(b) Salah Mohamed Abdel Raham, a community leader from the Rizeigat tribe involved in tribal people-to-people peace initiatives, was reportedly arrested by security forces on 9 July 2002. Reportedly, no reason was given for the arrest and no warrant was issued. The source indicates that Mr. Abdel Raham was arrested in Darfur by security forces while convening a tribal reconciliation conference between the Rizeigat and Dinka from Bahr el-Ghazal. In order to convene this conference, Mr. Abdel Raham had travelled to Dinka areas, some of which are located in regions controlled by SPLA. The forces involved in the initial arrest maintain that he was released then subsequently rearrested by security personnel from a different part of Darfur because of his connection with 26 men detained after clashes between the Rizeigat and Ma'aliya, both of them Arab tribes. However, Mr. Abdel Raham was allegedly not involved in these clashes, as he was in SPLA-controlled areas at the time of the incident. Since his initial arrest, Mr. Abdel Raham has reportedly not been seen. His family was denied permission to visit him and could not obtain details of his whereabouts. He was tortured by security forces in 1997 and suffers poor health and recurrent back problems and pain as a result;

(c) Eleven leaders from the Fur tribe were reportedly arrested by security forces in Zalingei, western Darfur, on 11 July 2002. Allegedly, they were all involved in reporting recent attacks against the tribe by Arab militia, and include: Adam Abdel Rasool (teacher); Abdel Moula Aam Abdel Moula (farmer); Gialani Omer (driver); Abdel Wahid Mohamed Ahmed (advocate); Mohamed Ahmed Abdel Moula (teacher); Amir Bahr el Din (farmer); Abdo Harran (farmer); Abdel Gabbar Abdalla (ommda — tribal leader); Abbo Hassan (shartai — tribal leader); Abdel Karim Mohamed Abkr (ommda); Abdalla Muhagir (sheikh — tribal leader). Allegedly, no reasons for their arrest have been provided, no arrest warrants were served and no charges have been pressed against these persons. Abdel Wahid Mohamed Ahmed is in a very poor state of health and only has one lung;

(d) Four men were reportedly arrested on 15 July 2002, including: Ali Shogar (health worker in Nartiti); Mohamed Abdel Rasool (teacher and chairman of the labourers' trade union in Zalingei); Mohamed Ismael (pharmacist at Zalingei hospital); Adam Ahmed (transport commission agent). Allegedly, none of the foregoing detainees has been allowed to receive family visits since his arrest, hence the source's fear that they may be subjected to torture during their detention;

(e) Further to their arrest on 6 May 2002, following a conflict between members of the Rizeigat and Ma'aliya tribes, on 17 July 2002, 88 of the 96 members of the Rizeigat tribe were sentenced to death by hanging or death by hanging and crucifixion, following what several sources considered to be an unfair trial carried out by the Special Court in Nyala, southern Darfur. The Court was headed by Judge Mukhtar Ibrahim Adam and two military and police officers. Two of the 88 persons were 14-year-old boys. According to the information received, a total of 136 men were arrested on 6 May 2002 as a consequence of the tribal conflict, which resulted in the deaths of 10 people. A total of 96 persons from the Rizeigat tribe were then reportedly charged with armed robbery, murder and possession of arms.[18] According to information received, 35 of the detainees, including 3 children, were reportedly subjected to torture during their detention between 21 and 22 June 2002, by the province Chief of Police, an interrogation officer

(Ahmed), and four assistants (Omer, Nasr el Din, Musa and "Abu Indelang"). Reportedly, 7 of the 96 persons have been acquitted and one has been sentenced to 10 years' imprisonment as a result of the trial. Reportedly, lawyer Mohamed Fadl Hamid, who is acting on behalf of the defendants, submitted an appeal to the District Chief of Justice on 20 July 2002. Serious concern was expressed about the physical and psychological integrity of the 86 men and 2 children sentenced to death, particularly the use of torture and breaches of internationally recognized fair trial standards and guarantees, including the right to be tried by an impartial tribunal, the right to appeal before an independent tribunal and the right to legal representation, alongside the fact that these civilians were tried by what is effectively a military tribunal.

V. Conclusions and recommendations

General observations

82. The Special Rapporteur welcomes the signing of the Machakos Protocol, which, in his view, may open the way for successful peace negotiations. This may be an important step forward, which may provide a chance not to be missed to put an end to war-related human rights abuses. However, for peace to be sustainable it is paramount that the issue of human rights and democratization also be addressed and placed at the heart of the peace talks as well as in their implementation, including in the interim period.[19] Moreover, the building up of a climate of mutual trust and confidence will facilitate reconciliation.

83. Any analysis of the human rights situation in the Sudan should be accompanied by constructive advice by the international community aiming at developing concrete strategies of assistance for the post-conflict scenario.

84. Of key importance is the democratization of the country through the creation and/or strengthening of the civil society. The Special Rapporteur, while acknowledging that since 1998 the Government had been making more efforts to that end than other countries in the region, also noted that the end of 2000 marked a setback, whereby no remarkable progress had been made in spite of the many commitments made but not yet fulfilled at the time of submission of the present report. The burden represented by the war cannot provide any justification for human rights abuses.

85. The Special Rapporteur encourages the Government not to abandon this path and expresses his hope that during his next visit he will be able to witness concrete evidence and progress in this direction. In this context, the Special Rapporteur acknowledges the good climate of cooperation with the Government.

86. So far, the human rights situation in the Sudan has not improved. Main issues of concern relate to the continuation of the state of emergency, the amendments made to the National Security Forces Act and the virtual impunity enjoyed by the security services, the persistence of press censorship and the limited room for political activities enjoyed by opposition parties.

87. In addition, the deterioration of the situation in Darfur, the establishment of Special Courts and the recent cases of death sentences have been the object of widespread concern.

88. An increase in military activities could also be observed. While the ceasefire in the Nuba Mountains is still holding, the redeployment of troops in western Upper Nile has led to an intensification of war activities in the oil area. The plight of civilians, particularly internally displaced persons, remains of concern.

The peace process

89. The Special Rapporteur joins the European Union's call to "all parties to the conflict (...) to adhere to the agreement and to work in a dedicated manner to accomplish a comprehensive peace agreement when negotiations resume in mid-August 2002",[20] aimed at resolving outstanding issues. The support of all civil society, ethnic and political groups within the Sudan to the resolution of a conflict in which not only North and South have been involved is key for this agreement to start paving the way for a durable and just peace.

90. In this connection, the Special Rapporteur refers to the report of the British Associate Parliamentary Group on Sudan, which recommends that donors give increased support to grassroots peace initiatives and facilitating civil society involvement in the peace process.[21]

91. Equally important is the issue of wealth-sharing, including oil revenues, particularly in the context of the formulation of a repatriation, resettlement, rehabilitation, reconstruction and development plan, as foreseen in the Machakos Protocol.

92. To this end, in order to ensure adequate implementation of the peace agreement, it is important that an appropriate mechanism for international monitoring be put in place. In view of the specific nature of the monitoring, it would not be appropriate for military personnel to be utilized to this end.

The conflict

93. In this connection, the Special Rapporteur noted a relevant commitment made by the Government within the European Union-Sudan dialogue, i.e., (a) that the Government would not deliberately target civilian populations or installations and (b) that it would guarantee access for humanitarian operations while keeping exceptions to a strict minimum.

94. Civilians have continued to be targeted. The Special Rapporteur therefore encourages all the parties to the conflict to use all their influence to put an immediate end to violations of human rights and international humanitarian law.

95. He also noted that the Government signed the agreement to protect non-combatant civilians and civilian facilities from military attack and welcomes this development, along with the Government's decision to allow some monitoring of incidents taking place within the context of the war. He will continue to monitor the situation to see how these commitments are implemented on the ground.

96. As for access, the Special Rapporteur regrets that many instances of flight restriction or denial have occurred, affecting numerous locations in southern Sudan, and strongly condemns the use of flight denials as a weapon of war.

The oil issue within the context of the right to development

97. Oil is exacerbating the conflict. The use of oil revenues, the right to development and the need to develop a wealth-sharing arrangement with the South are inextricably linked elements to be considered for a sustainable peace.

98. The Special Rapporteur referred to the United Nations Declaration on the Right to Development, to reiterate that "development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom".[22]

99. In paragraph 11 of its resolution 2001/9, the Commission on Human Rights stresses the necessity of establishing, at the national level, an enabling legal, political, economic and social environment for the realization of the right to development and emphasizes the importance of democratic, participatory, transparent and accountable governance, as well as the need for efficient national mechanisms such as national human rights commissions, to ensure respect for civil, economic, cultural, political and social rights, without any distinction.[23]

100. The use of oil revenues should be a transparent process based on a clear wealth-sharing arrangement involving all relevant stakeholders.

Transition to democracy

Individual cases

101. The Special Rapporteur deplores the recurrence of cases of human rights violations and lack of official action to investigate and sanction such abuses and calls upon the Government to act promptly upon urgent appeals received and to respond to them.

102. In view of the nature of the majority of the cases received and keeping in mind a pattern that points to the security agents being invariably involved in human rights abuses, the Special Rapporteur reiterates the need to bring the security police under the rule of law, that relevant legislation therefore be revised and that impunity be fought in the most determined manner.

Freedom of the press

103. The National Press Council should be empowered to play a more significant role in the

defence of freedom of expression. The lifting of censorship should be effective.

Freedom of religion and belief

104. The Special Rapporteur noted that, while the Advisory Council for Christians has been set up, full freedom of religion has not yet been achieved in the Sudan. In this connection, he encourages the Government to provide further clarifications on the role of such a body, in the hope that it would be empowered to fight effectively against religious discrimination.

The situation of women

105. In keeping with its relevant resolutions (1996/73, 1997/59, 1998/67, 1999/15, 2000/27 and 2001/18), whereby the Commission on Human Rights stressed the importance of the Special Rapporteur continuing to apply gender perspective systematically in the reporting process, including information collection and recommendations, during his visits, the Special Rapporteur paid particular attention to the situation of women, including in the framework of the conflict.

106. He noted with concern some recent elements which appear contrary to the emancipation of women and encourages the Government to clarify its position and allow for open discussions on this issue, including with a view to acceding to the Committee on the Elimination of Discrimination against Women.

107. Women should be empowered to play an active role in the peace process.

Ratification of international instruments

108. The Special Rapporteur reiterates his appeal to the Government to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was signed in 1986, and to accede to the Convention on the Elimination of All Forms of Discrimination against Women, in line with the commitment which government officials expressed in this respect.

Abductions

109. The Special Rapporteur calls upon the Government to do more with a view to eradicating abductions, particularly in connection with the incident referred to in paragraph 53 of the present report, into which an investigation should be launched. Any relevant information received will be reflected in his next report to the Commission on Human Rights.

110. The need for strong advocacy remains and the Government should provide the necessary political and financial backing to fight effectively against this practice.

111. Perpetrators should be brought to justice, thus ending the impunity from which they have benefited so far.

Darfur

112. The Special Rapporteur expressed deep concern about the establishment of Special Courts, which are not in keeping with relevant international standards. In particular, he wishes to refer to article 14 of the International Covenant on Civil and Political Rights, adopted by the General Assembly by its resolution 2200 A (XXI), whereby everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law (para. 1) and in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him ...; not to be compelled to testify against himself or to confess guilt (para. 3).

113. Article 12 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly by its resolution 3452 (XXX), provides that any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

114. The Special Rapporteur also wishes to refer to relevant recommendations made by the Special Rapporteur on torture (A/56/156, para. 39).

SPLM/A

115. The Special Rapporteur calls upon SPLM/A to work for the development of genuine democratic structures to replace the existing military-based ones and underscores the importance of doing so as a crucial condition for the implementation of the right to self-determination.

116. As for violations of human rights occurring within the framework of the conflict, the Special Rapporteur condemns disregard for international standards and appeals to SPLM/A and allied militias to do their utmost to prevent human rights violations.

Technical cooperation programme of the Office of the United Nations High Commissioner for Human Rights

117. The Special Rapporteur reported on the status of implementation of activities foreseen under the above-mentioned programme in the presentation of his report to the Commission on Human Rights.

118. A new 12-month phase of the programme started in April, focusing on an increased number of activities, some of which constitute more in-depth follow-up training aiming at the modification of the relevant manuals to incorporate relevant international human rights standards. The Special Rapporteur will continue to follow any new developments in this field, while reiterating that progress will only be measured on the ground in terms of significant impact on the situation of human rights. The recurrence of individual cases and specific patterns of violations will be important elements to assess the success of such an endeavour.

119. The Special Rapporteur encourages the international community at large, donors and NGOs actively to support, including financially, the Office of the United Nations High Commissioner for Human Rights and the Government of the Sudan in their cooperative endeavour.

The role of the United Nations

120. Finally, as discussions are ongoing on an effective way to monitor implementation of the peace process and in view of the fact that any initiative — be it strictly in the field of human rights, or within the framework of the peace process — should find its place in the context of a wider political initiative, the Special Rapporteur believes that strong political involvement by the United Nations is urgently needed to support the peace process, for the neutrality and objectivity that characterize its action as opposed to single Governments' initiatives and for its potential to bring on board the whole international community in an effective and sustainable way.

Notes

[1] A statement made on 22 July 2002 by the New Sudan Council of Churches on the Machakos Protocol for peace of 22 July 2002.

[2] International Crisis Group (ICG), "Dialogue or Destruction? Organizing for Peace as the War in Sudan Escalates", Africa Report No. 48, Nairobi/Brussels, 27 June 2002.

[3] Some sources refer to "at least 18 dead and more than 100 wounded".

[4] Lundin Oil stopped its activities in the Sudan in view of the security situation. Activities had not been resumed when the present report was submitted.

[5] The European Coalition on Oil in Sudan (ECOS) report, "Depopulating Sudan's oil regions", refers to interviews with defectors from proxy militias, showing that they are instructed systematically to kill and forcibly displace civilians ("The use of proxy militias by the Government of the Sudan", p. 14).

[6] Some observers report that about 50 per cent of the national budget is allegedly spent on producing or buying weapons and military equipment.

[7] Presidential Decree 14/2002 of 26 January 2002.

[8] CEAWC has now been designed to function as a community-based project, which foresees the facilitation of the Government within a tribal-owned process. Leaders at the grass-roots level have been sensitized with a view to raising awareness within their own communities. Two reconciliation conferences are also scheduled to take place in western Kordofan and southern Darfur before the end of April with a view to solving the issue in a traditional manner. Legal

proceedings are foreseen as a last resort measure, upon completion of the one-year period.

[9] Slavery, Abduction and Forced Servitude in Sudan, Report of the International Eminent Persons Group, 22 May 2002, pp. 7 and 8.

[10] Ibid., p. 35.

[11] Press release: President al-Bashir kicks off a campaign for eradication of abduction, 14 May 2002. Provided by the Embassy of the Republic of the Sudan, New York, through the Permanent Mission of the Sudan to the United Nations at Geneva.

[12] In one of his interviews, the Special Rapporteur was told clearly that SPLM/A is not a movement, it is an army.

[13] Journalists, students and human rights defenders continued to be particularly targeted.

[14] On 20 June 2001, the Parliament approved an amendment to the National Security Forces Act, endorsed by the President on 4 July 2001, which allowed security forces to arrest and detain individuals for several months without judicial review, depending on the crime. Human rights organizations lamented that such an amendment further restricted the rights of the detainee, in comparison with the previous text.

[15] In this regard, the Special Rapporteur took note of the [illegible] allegations received in connection with the situation in oil-rich western Upper Nile.

[16] Decree 21/2001, Establishment of a Special Court at El-Fashir, Procedures, 5(e).

[17] Ibid., 5(g).

[18] These crimes can carry penalties of death by hanging, death by hanging and crucifixion, cross amputation or amputation.

[19] In this connection, the Special Rapporteur refers to his statement made in the Commission on Human Rights at its fifty-eighth session: "At the same time, however, I remain convinced that, in order to achieve a sustainable and just peace, it is paramount to focus not only on the symptoms but also on the root-causes of the conflict and that therefore a political follow-up is needed. It is therefore key that all relevant actors — including the civil society — be included in the process and that peace negotiations go hand in hand with a process of confidence-building and democratization, at the heart of which human rights must find their place. The momentum must be preserved."

[20] Statement on the Sudan, issued on 23 July 2002, by the Presidency of the European Union on behalf of the European Union.

[21] Associate Parliamentary Group on Sudan, Visit to Sudan, 7-12 April 2002, p. 14.

[22] Resolution 41/128, annex.

[23] See E/2001/23 (Part I)-E/CN.4/2001/167 (Part I).